

ROSE L. TERENCE

IBLA 82-682

Decided October 19, 1982

Appeal from decision of Eastern States Office, Bureau of Land Management, holding acquired lands oil and gas lease ES 17907 terminated by operation of law.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

BLM's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

APPEARANCES: Rose L. Terenzi, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Rose L. Terenzi appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated January 19, 1982, holding acquired lands oil and gas lease ES 17907 terminated by operation of law for failure to make timely payment of rental. Appellant's rental was due on January 2, 1981, 1/ but was not received by BLM until January 27, 1981.

1/ The BLM decision stated that the rental was due on Jan. 1, 1981. Since Jan. 1, 1981, was a holiday, appellant had until Jan. 2, 1981, to make timely payment. See 43 CFR 1821.2-2(e).

On appeal, appellant offers an explanation for the late payment which is summarized as follows: Appellant asserts she made timely payments for 1978, 1979, and 1980. However, her "Receipt for Payment" for 1980 indicated that her lease had been terminated. Appellant was informed by BLM, Silver Spring, Maryland, that the files were being transferred to Alexandria, Virginia, and that the computer system was having difficulty. BLM advised her that her lease was not in jeopardy and that it would be beneficial to wait for the computer notice instead of paying "extra early" as she had previously done. In December 1980, she phoned BLM in Alexandria to inquire about the notice for 1981. BLM assured her that it would come. She did not receive the notice and called BLM on January 22, 1981. BLM told her not to wait any longer for the notice and to pay the rental as fast as possible. She sent the payment and a letter of explanation on January 22, 1981, as evidenced by a copy of the customer receipt for \$ 7.50 from Express Mail Service. On January 23, 1981, she phoned BLM and was informed that the payment and letter had been received. BLM sent her a receipt noting that payment had been received on January 27, 1981.

Appellant believes that the delay in paying the rental was justifiable and not due to a lack of diligence. She contends that the computer error from the year before had unnerved her and that she was trying to "help keep the records straight by waiting for the official notice of rental due, which never came." She asserts that it was not her fault that BLM was in the process of moving computers to Alexandria and that she was ill-advised by a BLM official that it was beneficial for her to wait for the payment due notice.

Appellant adds that she received a notice this year (1982) for renewal, but that she had already paid the rental. By decision of January 19, 1982, BLM informed her that her lease had terminated for failure to pay timely the rental in 1981. Appellant notes that BLM had received and accepted her payments for 1981 and 1982.

[1] An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the annual rental payment is not received in the proper office of BLM on or before the anniversary date. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). The payment for oil and gas lease ES 17907 was due on or before January 2, 1981. Payment was received by BLM on January 27, 1981, or at the earliest, January 23, as claimed by appellant. In any event, payment was made more than 20 days after the due date, January 2, 1981. Since the requirements for reinstatement of an oil and gas lease terminated by operation of law for untimely payment of rent are statutory, the Department has no authority to reinstate a lease that has terminated for that reason, unless the payment is actually received or tendered within 20 days after the date of termination. Trend Resources Limited, 64 IBLA 383 (1982); Jack J. Grynberg, 64 IBLA 354 (1982).

[2] Appellant suggests that the acceptance of her rental checks is sufficient to bind the Department to reinstate her lease. The cashing of the checks and depositing them in the unearned account does not constitute an acceptance of the payments nor a determination that a lease will be reinstated. A refund will be made in due course. Eugene H. Jankoski, 43 IBLA 323 (1979); Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

